

1 APPEARANCES: (Cont'd)

2 MR. THOMAS R. STANTON
MR. ERIC MADIAR
3 160 North La Salle Street
Suite C-800
4 Chicago, Illinois 60601

5 (Appearing on behalf of the Staff of the
Illinois Commerce Commission)

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PROCEEDINGS

JUDGE ALBERS: By the authority vested in me by the Illinois Commerce Commission, I now call Docket Number 04-0240. This docket was initiated by Yates Telephone Company. The Petitioner seeks a suspension or modification of Section 251(b)(2) requirements of the Federal Telecommunications Act.

May I have the appearances for the record, please?

MR. MUNCY: Yes, Your Honor, Dennis K. Muncy, and Joseph D. Murphy, 306 West Church Street, Champaign, Illinois 61820, appearing for the Petitioner Yates City Telephone Company.

MR. STANTON: On behalf of the Staff of the Illinois Commerce Commission, Thomas R. Stanton and Eric M. Madiar, Office of General Counsel, 160 North LaSalle Street, Suite C-800, Chicago, Illinois 60601.

MR. COY: Appearing for Verizon Wireless, Roderick S. Coy and Haran C. Rashes of the firm Clark Hill, P.L.C., 2455 Woodlake Circle, Okemos, O-K-E-M-O-S, Michigan 48864.

1 JUDGE ALBERS: Thank you. Let the record
2 reflect that there are no others wishing to enter an
3 appearance.

4 The only preliminary matter I am aware of
5 is the Staff motion filed on May 24 regarding a
6 desire to file its testimony instanter. Is there
7 any objection to that motion?

8 MR. MUNCY: No objection, Your Honor.

9 JUDGE ALBERS: Any from Verizon Wireless?

10 MR. COY: No.

11 JUDGE ALBERS: Staff's motion is granted. Are
12 there any other preliminary matters? So we can get
13 right to the reason we are all here, to hear any
14 evidence which wasn't admitted into evidence but
15 which was previously offered. With that, I believe,
16 Mr. Hansen, you will be the first witness. If you
17 would like to call your first witness?

18 MR. STANTON: Sure, Judge. Staff calls
19 Mr. Hansen to the stand.

20 (Whereupon the Witness
21 was duly sworn by Judge
22 Albers.)

1 **MARK HANSEN**

2 called as a Witness on behalf of Staff of the
3 Illinois Commerce Commission, having been first duly
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. STANTON:

7 Q. Would you kindly state your name and business
8 address, sir.

9 A. Mark Hansen, 527 East Capitol Avenue,
10 Springfield, Illinois 62701.

11 Q. Now, do you have before you a document which
12 has been marked for purposes of identification as
13 ICC Staff Exhibit --

14 MR. MUNCY: I am more than willing to waive the
15 foundation questions for Mr. Hansen's testimony and
16 would have no objection to its admission, along with
17 the attachments it is supporting.

18 JUDGE ALBERS: Mr. Coy?

19 MR. COY: I have no objection.

20 MR. STANTON: Thank you. Then at this time I
21 would move to admit the direct testimony of Mark A.
22 Hansen previously marked Staff Exhibit 3.0

1 consisting of 12 pages of narrative testimony in
2 question and answer format, along with four
3 schedules containing various calculations and
4 figures marked 3.1, Schedule 3.2, Schedule 3.3
5 Public, and Schedule 3.3 Proprietary. At this time
6 I move that they be admitted into evidence. These
7 materials have all been filed with the Commission's
8 e-Docket system.

9 JUDGE ALBERS: Thank you. Hearing no objection
10 to their admission, Staff Exhibit 3.0, with three, I
11 am sorry, four schedules are admitted.

12 (Whereupon ICC Staff
13 Exhibit 3.0 with
14 Schedules 3.1, 3.2, 3.3
15 Public and 3.3
16 Proprietary was
17 admitted into
18 evidence.)

19 JUDGE ALBERS: Mr. Coy, would you like to begin
20 cross exam?

21 MR. COY: Your Honor, I feel at this time the
22 need to place on the record a formal motion to ask

1 to have my cross examination of Mr. Hansen from the
2 Odin case either incorporated by reference or be
3 allowed to submit an exhibit from the transcript of
4 that proceeding.

5 The testimony is substantially identical.
6 We have cross-examined Mr. Hansen three times in two
7 days already. And it is fundamentally unfair to
8 provide witnesses with multiple opportunities to
9 change answers and create confusion over cross
10 examination on what is canned, substantially
11 identical testimony. The problem in the proceeding
12 -- and I would note that the witness is scheduled to
13 appear eight more times in these some 33
14 substantially identical or at least made to look
15 substantially identical proceedings that have been
16 scheduled.

17 So, therefore, we want to place on the
18 record a formal motion that we be allowed to
19 incorporate that cross examination from the Odin
20 case or alternatively that we be allowed to submit
21 an exhibit of that cross examination once the
22 transcript becomes available.

1 MR. STANTON: Judge, at this point we would
2 oppose that motion. These are 30 some different
3 cases. They all contain different facts and figures
4 for the different companies. The cases have not
5 been consolidated. They have been treated
6 separately. So at this point we would oppose the
7 motion.

8 JUDGE ALBERS: Okay. Mr. Muncy, do you have
9 any objections or comments on that?

10 MR. MUNCY: I would not want the motion
11 considered until such time as we had available the
12 transcript of that proceeding to review, which we
13 haven't, and my memory is just not good enough that
14 I am willing to do that. And I agree with
15 Mr. Stanton that these are different cases at this
16 point in time. At this point in time I would ask
17 that you reserve ruling or do as Mr. Stanton
18 requests.

19 JUDGE ALBERS: Do you have any follow-up
20 comments?

21 MR. COY: The only follow-up is that we do have
22 a substantial procedural problem with the way the

1 so-called 33 cases are being dealt with and do not
2 believe that they are really separate cases when you
3 compare the testimonies and you compare -- they are
4 essentially turned into sort of an assembly line
5 which is calculated to, because of the sheer
6 practicalities of the situation, leading only to one
7 singular result. And we are objecting to that. And
8 the first objection is in the way of being required
9 to cross-examine some witnesses and give them 10, 12
10 times an opportunity to change their cross
11 examination.

12 Cross examination doesn't work that way.
13 You can't do it that way. And I appreciate your
14 predicament. Please don't misunderstand me. You
15 are a victim of this as much as we are. But I have
16 to do my job, and we have a problem with this, and
17 we move to incorporate our cross or make an exhibit,
18 as I indicated.

19 JUDGE ALBERS: Okay. Well, I know we have
20 batted around different ideas trying to expedite
21 these matters off the record. I certainly won't
22 burden this record by going through all that again.

1 I fully appreciate anyone's desire to try to speed
2 things along. I know we have a lot of these to get
3 through in a short amount of time.

4 My concerns, however, about the clarity of
5 each individual record still stands. I am concerned
6 about references to there being the one company in
7 another company's case. And, quite frankly, at this
8 point in time I think, like Mr. Muncy indicated, I
9 also cannot recall with any specificity the degree
10 to which the Odin cross examination of Mr. Hansen
11 may indulge any specifics of Odin as opposed to any
12 specifics of Yates City.

13 At this time then I am going to deny your
14 motion. However, if it becomes apparent at a later
15 time that we can do something similar and still
16 address the concerns about the clarity of each
17 record, I will be happy to reconsider my motion such
18 as that.

19 MR. COY: I am going to decline to do any cross
20 examination of the witness at this point. I
21 understand your ruling. I am just going to decline
22 to proceed to cross-examine him for the fourth time

1 in the beginning of the third day.

2 JUDGE ALBERS: Okay. I am somewhat puzzled by
3 that, but that's your decision, so. Mr. Muncy?

4 MR. MUNCY: No cross examination for
5 Mr. Hansen.

6 JUDGE ALBERS: I don't have any questions
7 either, Mr. Hansen. So, thank you.

8 (Witness excused.)

9 JUDGE ALBERS: Off the record for a
10 minute.

11 (Whereupon there was
12 then had an
13 off-the-record
14 discussion.)

15 JUDGE ALBERS: Back on the record. At this
16 point in time we will defer hearing any additional
17 witnesses in the Yates City matter and we will
18 continue this until 3:00 o'clock this afternoon.

19 (Whereupon the hearing
20 in this matter was
21 continued until 3:00
22 o'clock p.m.)

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A F T E R N O O N S E S S I O N

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(Whereupon at this point the

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proceedings were stenographically

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recorded by Cheryl A. Davis.)

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JUDGE ALBERS: Back on the record.

8

Earlier this morning we recessed this

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matter after receiving the testimony of Mark Hanson,

10

and we shall now continue this matter to allow

11

Mr. Muncy to call his first witness on behalf of

12

Yates City.

13

MR. MUNCY: Yes, Your Honor. I call Jason P.

14

Hendricks.

15

Have you been sworn in in this docket?

16

JUDGE ALBERS: I don't think he has in this

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docket, and we also have Mr. Hoagg.

18

MR. MUNCY: I don't know if he was sworn in in

19

this docket either.

20

MR. RASHES: Do you want me to get

21

Mr. McDermott for swearing?

22

JUDGE ALBERS: Please. He's just right outside

1 the room, isn't he?

2 MR. RASHES: Yeah. Never mind. He's on the
3 way.

4 JUDGE ALBERS: If you gentlemen could raise
5 your right hand, please.

6 (Whereupon three witnesses were sworn by
7 Judge Albers.)

8 JUDGE ALBERS: Thank you.

9 JASON P. HENDRICKS

10 called as a witness on behalf of Yates City
11 Telephone Company, having been first duly sworn, was
12 examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MUNCY:

15 Q. Would you please state your name and business
16 address.

17 THE WITNESS:

18 A. Jason P. Hendricks, 2270 LaMontana Way,
19 Colorado Springs, Colorado 80918.

20 MR. MADIAR: Your Honor, Staff would waive the
21 need for foundational questions for this witness.

22 MR. COY: We would not.

1 JUDGE ALBERS: Okay. Mr. Muncy.

2 MR. MUNCY: All right.

3 Q. Mr. Hendricks, do you have prefiled testimony
4 for this docket which has been previously
5 distributed marked for identification as Yates City
6 Exhibit Number 1?

7 A. Yes.

8 Q. Do you have a copy of that in front of you?

9 A. I do.

10 Q. And is this your direct testimony for this
11 docket?

12 A. Yes.

13 Q. Do you have any additions or corrections you
14 need to make to your prefiled direct testimony?

15 A. No.

16 Q. And was this testimony prepared by you or under
17 your direction and supervision?

18 A. Yes, it was.

19 Q. And am I correct that Yates City Exhibit 1
20 consists of 32 pages of questions and answers?

21 A. Yes, it does.

22 Q. If I were to ask you those same questions today

1 orally, would your answers be the same?

2 A. Yes.

3 Q. And do you have attached to exhibit -- Yates
4 City Exhibit 1 are there three attachments?

5 A. There are. I only have one of them.

6 Q. Okay.

7 (Whereupon said attachments were provided
8 to the witness by Mr. Muncy.)

9 Q. Am I correct that Attachment 1 to Yates City
10 Exhibit 1 is a copy of the local number portability
11 data summary that you prepared for Yates City
12 Telephone Company and which is addressed in your
13 testimony?

14 A. Yes, it is.

15 Q. And is Attachment No. 2 a copy of the
16 correspondence from wireless carriers which was
17 received by Yates City in regard to
18 wireline-to-wireless local number portability?

19 A. Yes, and I now have Attachment 2.

20 Q. And finally, is Attachment 3 of Yates City
21 Exhibit Number 1 a copy of the Nortel training
22 course documents?

1 A. Yes, it is.

2 Q. And do you also have rebuttal testimony in this
3 docket which has been marked for identification as
4 Yates City Exhibit 2?

5 A. Yes, I do.

6 Q. And does your rebuttal testimony, Yates City
7 Exhibit 2, consist of 21 pages of questions and
8 answers?

9 A. Yes.

10 Q. If I were to ask you those questions today
11 orally, would your answers be the same?

12 A. Yes, they would.

13 Q. And is there also one attachment to Yates City
14 Exhibit Number 2?

15 A. Yes.

16 Q. And would you indicate what that attachment is?

17 A. Yes. It's an exhibit referenced in my
18 testimony describing minutes of use and the basis
19 for why they were included.

20 MR. MUNCY: Your Honor, I would offer Yates
21 City Exhibit 1 together with Attachments 1, 2, and 3
22 and I'd also offer Yates City Exhibit 2 with

1 Attachment 1.

2 JUDGE ALBERS: Is there any objection?

3 MR. COY: Yes, there is, Your Honor. We object
4 to the binding in of this material into the record
5 and admitting it into evidence. We move to strike
6 it, and we would also -- this is the combined motion
7 to dismiss this case.

8 This information is not really testimony.
9 It is a canned, substantive presentation that has
10 been presented essentially 33 times with different
11 people's names on it to give the pretense of it
12 being actual testimony of witnesses.

13 What has actually occurred here is the
14 petitioners have manipulated the Commission's
15 processes by filing 33 cases simultaneously on the
16 same day, knowing full well they have to be handled
17 in 180 days under the schedule. As a result of this
18 time frame, they have forced on the Commission, the
19 Administrative Law Judge, and all of the parties a
20 situation where the petitioners obviously believe
21 that the Commission will get caught up as we have in
22 simply an assembly line process that really isn't

1 any semblance of a separate hearing and effectively
2 constitutes a request for blanket waivers, not
3 separate waivers, under 251(f) of the Federal
4 Telecommunications Act. These allegedly 33 separate
5 cases are not separate at all.

6 The Illinois Commerce Commission lacks
7 the authority or jurisdiction to grant such blanket
8 waivers, such as this proceeding has become, with
9 the 33 cases.

10 Mr. Hendricks' testimony itself, for
11 example, is presented some 11 different times, but
12 his testimony is substantively indistinguishable
13 from that of Mr. Jacobson in one of the other cases,
14 Mr. Guffy in two of the other cases, and on and on.
15 All of this really adds up to a situation whereby
16 intentionally filing 33 cases in a row, or
17 simultaneously, the petitioners have created a
18 situation that creates this assembly line that they
19 believe is calculated to lead to only one single
20 result repeated 33 times and that is a blanket
21 waiver for all 33 companies. That is beyond this
22 Commission's jurisdiction and is in violation of the

1 Federal Telecommunications Act.

2 Therefore, we object to the admission
3 into evidence of this so-called testimony. We move
4 to strike it, and we also move to dismiss the Yates
5 City Telephone Company application.

6 JUDGE ALBERS: Before I hear responses, just so
7 I'm clear, you move to strike all the testimony
8 offered by Mr. Hendricks?

9 MR. COY: I would like to do that, and we
10 certainly take the position --

11 JUDGE ALBERS: I just want to be clear. I'm
12 not --

13 MR. COY: Well, and I do too, but we are going
14 through the motions of creating separate documents
15 so I'm not -- separate records. I'm not sure I can
16 do that here. If I could, I would like to.

17 JUDGE ALBERS: Oh, I mean -- maybe I should
18 make myself more clear. Are you moving to strike
19 all of the testimony offered by Mr. Hendricks in
20 this particular docket?

21 MR. COY: Yes.

22 JUDGE ALBERS: Okay. That's all I was asking.

1 MR. COY: Okay. The other question is a good
2 one too though.

3 JUDGE ALBERS: Well, I'm not going there.

4 Well, Mr. Muncy, this is your witness.
5 I'll let you respond first.

6 MR. MUNCY: I'm not sure what sort of a
7 response is required.

8 Your Honor, Yates City filed a petition
9 in this docket under the provisions of 251 of the
10 Federal Act seeking a suspension and its specific
11 criteria contained therein. Mr. Hendricks in his
12 testimony, both in his direct and rebuttal
13 testimony, addressed the statutory criteria on the
14 Yates City specific company basis and to submit the
15 necessary evidence and to create the record where
16 Yates City is an individual company but can be
17 granted a suspension pursuant to the terms of the
18 Act.

19 Mr. Coy made a lot of comments that are
20 about the companies, Yates City conspiring with a
21 number of other companies to do things, that I don't
22 know that that even merits a response. Each of the

1 companies that sought a suspension from the
2 Commission, including Yates City, recognize that
3 they were required on an individual company basis to
4 submit proof. They filed their petition.
5 Mr. Hendricks has presented the testimony in support
6 of that under the requirements of the Federal Act.
7 There is no basis not to allow Mr. Hendricks'
8 testimony into the record.

9 The fact that there are a number of other
10 pending cases, this Commission has got the right to
11 hear the cases that are filed before it, and
12 individual petitions were filed, and this case is
13 proceeding in an orderly manner and there is no
14 basis for the motion to not allow the admission of
15 Yates City Exhibits 1 and 2 and the attachments, and
16 there's also no basis for the motion to dismiss this
17 proceeding simply because Mr. Coy doesn't like that
18 there's a number of other proceedings going on,
19 which I would point out that in each of those cases
20 the individual companies submitted record evidence
21 based upon their individual company's circumstances
22 and costs.

1 JUDGE ALBERS: Mr. Stanton or Mr. Madiar?

2 MR. MADIAR: We would have no comment, Your
3 Honor.

4 JUDGE ALBERS: Okay. Do you have a reply to
5 that response?

6 MR. COY: Yes. First of all, it's not accurate
7 to say I indicated anybody conspired with anybody.
8 I stated a fact which was that by design the
9 petitioners filed 33 petitions all simultaneously on
10 the same day. That didn't happen --

11 JUDGE ALBERS: For the record, I don't believe
12 they were all filed on the same day, but that's not
13 a major point here. I'm not going to --

14 MR. COY: On or about the same day.

15 JUDGE ALBERS: That's fine.

16 MR. COY: Okay? On or about, effectively on
17 the same day. On or about the same day is close
18 enough, such that they had to all be handled
19 essentially in the same 180-day time frame, and my
20 argument with respect to that, there's really two
21 legal bases.

22 One, these presentations are not

1 competent, material and substantial evidence.

2 They're a presentation, a canned presentation, that
3 was prepared by counsel based upon what they think
4 did the trick in five earlier cases this Commission
5 dealt with, and, secondly, that the Federal
6 Telecommunications Act of 1996 does not permit a
7 commission to deal with a blanket waiver kind of
8 situation where the assembly line kind of process
9 that we have here results in blanket waivers to all
10 of the petitioners. To do 33 cases in a week and a
11 half speaks itself of violations of fundamental
12 fairness in the hearing process and due process.
13 That's the basis for our motions.

14 JUDGE ALBERS: Okay. It would seem to me that
15 you are anticipating the outcome of these
16 proceedings.

17 MR. COY: I think that's a fair speculation.

18 JUDGE ALBERS: It doesn't speak well for me.

19 MR. COY: I don't mean to suggest anything
20 disrespectful. I'm simply observing on what seems
21 to be the pattern of actions and the identical
22 presentations by some of the parties in this case

1 and the fact that they're trying to fit so clearly
2 into a pattern where the outcome will be preordained
3 and by how they have reacted to anyone questioning
4 any of the factual information or in any way
5 challenging the underlying premises of some of the
6 assumptions and claims that they're making.

7 JUDGE ALBERS: Again, I would agree with you
8 that there are certainly many aspects of these cases
9 that are very similar if not identical in some
10 respects, but, by the same token, I would imagine
11 that would make it all the easier for Verizon
12 Wireless to essentially poke holes in the
13 arguments.

14 Again, I'm not aware of any particular
15 basis for dismissing a case simply because other
16 cases of a similar nature were filed on or about the
17 same time, and, yes, there is a high volume we're
18 dealing with here, but, again, if the federal law
19 allows these carriers to do this, and absent any
20 evidence of an actual conspiracy or, even if you
21 didn't allege conspiracy, absent any evidence of
22 some type of intent to bind the Commission's hands,

1 I'm not persuaded to certainly recommend dismissal
2 of this case. I'll just note that certainly
3 dismissal is not within my power. That would be up
4 to the Commission itself. I can only recommend
5 dismissal, and as far as moving to strike the
6 testimony, I will deny that motion as well.

7 Does anyone have any further comments or
8 objections regarding the offering of the testimony?

9 MR. COY: No.

10 JUDGE ALBERS: Does Staff have any objection?

11 MR. MADIAR: Staff has none.

12 JUDGE ALBERS: Hearing no objection, Yates City
13 Exhibits 1 and 2 with the attachments are admitted.

14 (Whereupon Yates City Exhibits 1 and 2
15 with attachments were received into
16 evidence.)

17 MR. MUNCY: Mr. Hendricks is available for
18 cross-examination.

19 JUDGE ALBERS: Does anyone have any questions
20 for Mr. Hendricks?

21 MR. COY: I have my motion to ask to bind in
22 the cross-examination of Mr. Hendricks from the Odin

1 case. We've cross-examined him I believe four times
2 in two and a half days and have had a variety of
3 answers. We don't plan to cross-examine him again
4 and give him a fifth opportunity to come up with
5 answers. You may recall even yesterday in one of
6 the occasions he acknowledged how having thought
7 about the question again for awhile he came up with
8 some new information and what not. That very
9 clearly demonstrates the prejudice that results from
10 this kind of a process, so we ask to incorporate in
11 either by reference our cross in the Odin case or to
12 submit an exhibit once the transcript has been
13 available and we can examine it so that there's an
14 actual document in the record.

15 JUDGE ALBERS: Well, during the lunch break I
16 did become aware of the fact that at least a draft
17 of the Odin transcript has been completed, although
18 I doubt anyone has had time to actually look at that
19 transcript.

20 MR. MUNCY: That's correct.

21 MR. COY: I was not so aware.

22 JUDGE ALBERS: I simply asked the reporter

1 before we went on the record.

2 MR. COY: And let me make very clear, I think
3 the reporters, court reporters do a magnificent
4 job. There's no criticism whatsoever intended in
5 these arguments with respect to the tasks that
6 they're performing so well. It's just that we can't
7 do too many things all simultaneously.

8 JUDGE ALBERS: I certainly appreciate that.

9 As far as responses to the motion then?

10 MR. MUNCY: I'm going to object to the motion,
11 Your Honor. The cross-examination in Odin, I have
12 not had an opportunity to review the transcript, and
13 we did notice that these are individual cases and
14 the facts are different. I don't believe that it's
15 appropriate at least at this stage, and we've had
16 these discussions in other dockets so I don't know
17 exactly how far I need to go. I know you've given
18 Mr. Coy the opportunity to reserve his right and
19 consider this. I think it's appropriate in light of
20 the schedule we're under and the fact that there's
21 not been any understanding reached that would lead
22 to a condensed version being submitted as you had

1 suggested that we simply move forward with the
2 cross-examination in this docket, and I'd ask that
3 we do so.

4 JUDGE ALBERS: Does Staff have a response?

5 MR. MADIAR: Yes, Your Honor. Staff is open to
6 the suggestion that Your Honor had made earlier
7 about trying to come up with some type of
8 standardized cross and answer based upon the
9 transcript from whatever proceeding Mr. Coy had
10 referenced before, and we remain open to that. We
11 would object to trying to do a wholesale integration
12 of the previous answers in another docket without
13 something along the lines that you were thinking.

14 JUDGE ALBERS: Do you want to reply to those
15 responses?

16 MR. COY: The only thing that I would have is
17 that I would certainly disagree with counsel for the
18 Petitioner that I had been offered something that
19 preserves my rights. That is simply not accurate
20 from our viewpoint. We've been offered some
21 alternatives that are described on the record, but
22 to characterize them as preserving our rights would

1 not be accurate.

2 JUDGE ALBERS: Well, as indicated in prior
3 dockets, I'm still concerned about the end result if
4 we simply try to lift a transcript from one case to
5 another, particularly since none of us have even had
6 the opportunity to review that transcript. As
7 indicated before, I'm responsible for having 33
8 separate records so the Commission can make 33
9 decisions, and I still have concerns about the
10 clarity of the records if we attempted to do that.

11 Given the availability of at least a
12 draft of the Odin transcript, I will ask the parties
13 at this time would anyone see any benefit or have
14 any interest in breaking from the hearings at this
15 point so that perhaps this afternoon the parties
16 could at least look over that transcript and
17 potentially come to a resolution that might save us
18 time later, yet still how would everyone feel if
19 they were able to get the questions and answers into
20 the record that they believe are appropriate?

21 MR. COY: I have no problem with looking at the
22 transcript. I fully intend to look at this

1 transcript, but I would have to continue to say that
2 I'm sufficiently unclear as to how a process that's
3 being generally described here would really work. I
4 am not receptive to generic questions and generic
5 answers.

6 Cross-examination is a live trial
7 procedure and tactic that is important in
8 establishing the facts in a contested situation, and
9 it doesn't lend itself to kind of the manufactured
10 situation of written questions and answers that is
11 being proposed, and that's the prejudice that we
12 have in having to cross-examine on substantially
13 identical information over and over again. So I'm
14 certainly willing to take a look at it, but I don't
15 want to mislead you into thinking that I'm
16 optimistic on how that is going to be an acceptable
17 outcome, and that's the best I can tell you.

18 JUDGE ALBERS: I don't want to argue with you,
19 Mr. Coy. I just want to reiterate that I'm not
20 suggesting that the exact same set of questions
21 later be offered in each of the subsequent dockets.
22 I'm merely suggesting that perhaps if there are

1 questions regarding maybe perhaps the way a witness
2 developed a certain opinion, those could be agreed
3 to. I'm assuming that -- and hopefully correctly on
4 my part, that the counsel for the witnesses at issue
5 in each instance would agree that their witness
6 would answer the same in each case when it came to
7 just developing their basic opinions about their
8 positions. To the extent that there are nuances or
9 particular distinctions to be drawn between
10 different companies, then certainly I would, you
11 know, welcome any live cross that anyone might want
12 to conduct, yet because it would be a nuance or a
13 particular distinction, I would think that that
14 would be difficult to lift from an existing
15 transcript and put into another docket.

16 I just want to make sure that my
17 suggestion is clear.

18 MR. COY: I don't think it's any clearer really
19 than it was before. I hear what you're saying. It
20 still sounds to me like it ends up being some
21 version of generic cross questions and generic
22 answers, and that's not cross-examination.

1 JUDGE ALBERS: Well, I guess to me it seems by
2 lifting a transcript from one document and turning
3 it into numerous other ones, you're creating a
4 generic transcript.

5 MR. COY: In a spontaneous setting it may look
6 like something like that, but I mean I -- and I
7 don't want to argue with you either.

8 JUDGE ALBERS: No. Maybe I should make this
9 statement just to again clarify what I'm suggesting,
10 and that's not that people would take the time to
11 craft a particular answer for a witness to offer,
12 but that you would find answers in the transcript
13 that are acceptable that people could agree would
14 still apply to the subsequent cases. Does that
15 maybe further clarify what I'm suggesting?

16 MR. COY: So the concept would be that -- as I
17 understand it, it would be essentially that you have
18 stipulated cross-examination questions and answers
19 on cross-examination that would be stipulated to by
20 the parties for future cases, for the ones yet to
21 go.

22 JUDGE ALBERS: Essentially. If you were to ask

1 a question of a witness that you asked exactly the
2 same way in the Odin case, for example, and the
3 parties agree, let's just say you were asking
4 Mr. Hoagg a question and Mr. Stanton and Mr. Madiar
5 agree that Mr. Hoagg's answer is still applicable to
6 whatever future case it is you're seeking to
7 incorporate it into. Not modify the answer
8 Mr. Hoagg gave on the transcript, but simply agree
9 that the answer still is applicable to that company,
10 and if what I'm saying in my further clarification
11 raises concerns in the minds of the other attorneys
12 present, please say so because then maybe there's
13 other reasons this idea won't pan out, but.

14 MR. MUNCY: Cross-examination of the company
15 witnesses I think has varied quite a bit by counsel
16 from Verizon Wireless from docket to docket. I mean
17 there are, you know, different factual circumstances
18 with each case about the costs, you know, the kind
19 of equipment they have, what they need to do to be
20 LNP capable. I think if I -- well, besides the
21 fact, and I wanted to make sure that I understood
22 from the court reporter. Can we go off the record

1 for just a second so I can ask her a question about
2 the transcript?

3 JUDGE ALBERS: Okay. Off the record.

4 (Whereupon at this point in the
5 proceedings an off-the-record discussion
6 transpired.)

7 JUDGE ALBERS: Back on the record.

8 It would appear that while we have the
9 Odin transcript, it's not in a -- at least right now
10 not in a form we can read it in. It's simply on a
11 computer disk on the table here, and it also appears
12 that there is not much hope among the parties that
13 they could accomplish anything in taking the
14 afternoon off, so to speak.

15 So with that, unless someone has anything
16 further they want to say before I make a ruling.
17 With that then, I will deny the motion of Verizon
18 Wireless to incorporate the Odin -- incorporate
19 Mr. Hendricks' cross from the Odin case.

20 Does anyone have any questions for
21 Mr. Hendricks?

22 MR. COY: In the facts and the circumstances,

1 we're going to decline to ask any questions.

2 JUDGE ALBERS: Okay.

3 MR. STANTON: No questions.

4 JUDGE ALBERS: Okay.

5 EXAMINATION

6 BY JUDGE ALBERS:

7 Q. In light of the Staff's position and your
8 rebuttal testimony, is it correct for the Commission
9 to understand that Petitioner is now seeking a
10 waiver under Section 251(f)(2)(A)(i)?

11 A. That's correct.

12 Q. Do you know what area code Yates City is in?

13 A. 309.

14 JUDGE ALBERS: Thank you, Mr. Hendricks.

15 I doubt you have any redirect on that
16 one.

17 MR. MUNCY: No, I do not have any redirect.

18 (Witness excused.)

19 JUDGE ALBERS: I think we have been taking
20 Mr. McDermott after the company witness, so is there
21 anything further from Yates City?

22 MR. MUNCY: Nothing further.

1 JUDGE ALBERS: Would Verizon Wireless like to
2 call its witness?

3 MR. COY: We would call Michael A. McDermott.

4 MICHAEL A. McDERMOTT
5 called as a witness on behalf of Verizon Wireless,
6 having been first duly sworn, was examined and
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. COY:

10 Q. Mr. McDermott, would you state your name and
11 business address for the record, please.

12 THE WITNESS:

13 A. Michael, M-I-C-H-A-E-L, middle initial A., last
14 name McDermott, M-c-D-E-R-M-O-T-T. The address is
15 1515 Woodfield Road, Suite 1400, Schaumburg,
16 Illinois 60173.

17 MR. MUNCY: Your Honor, we're willing to waive
18 the foundational questions in regard to
19 Mr. McDermott's testimony and in regard to his
20 Attachments A, B, and C and have no objection to
21 those being admitted into the record.

22 MR. MADIAR: Staff would concur.

1 BY MR. COY:

2 Q. Mr. McDermott, is the document I'm showing you
3 that's Verizon Wireless Exhibit 1 consisting of
4 questions and answers of some 23 pages along with
5 Attachments A, B, and C your prepared and prefiled
6 testimony in this proceeding?

7 A. Yes, it is.

8 MR. COY: Then we would move to have his
9 testimony as Exhibit 1 and the attachments admitted
10 into evidence in the record.

11 JUDGE ALBERS: Would you identify Attachments
12 A, B, and C?

13 MR. COY: I did. I just did.

14 JUDGE ALBERS: Is there any objection to
15 Exhibit 1 and Attachments A, B, and C?

16 MR. MUNCY: No objections to Exhibit 1 and
17 Attachments A, B, and C.

18 MR. MADIAR: Staff concurs.

19 MR. COY: Mr. McDermott, do you have --

20 JUDGE ALBERS: Let me admit these into the
21 record.

22 MR. COY: Oh. Pardon?

1 JUDGE ALBERS: Let me admit these exhibits
2 first.

3 MR. COY: Oh, I'm sorry.

4 JUDGE ALBERS: That's all right. I think you'd
5 prefer it that way in the end.

6 Verizon Wireless Exhibit 1 with
7 Attachments A, B, and C are admitted.

8 (Whereupon Verizon Wireless Exhibit 1
9 with Attachments, A, B, and C was
10 received into evidence.)

11 JUDGE ALBERS: Please.

12 BY MR. COY:

13 Q. Mr. McDermott, do you have another exhibit?

14 A. Yes, sir.

15 MR. COY: If I could have this document marked
16 for identification, please, as Attachment D.

17 (Whereupon Verizon Wireless
18 Attachment D to Exhibit 1 was marked
19 for identification.)

20 Q. Mr. McDermott, the document I'm showing you
21 which has been marked for identification by the
22 reporter as Verizon Wireless Exhibit 1 - Attachment

1 D, is that the additional exhibit you have in this
2 case?

3 A. Yes, it is.

4 Q. Okay. And would you describe Attachment D for
5 the record, please.

6 A. Yes. Attachment D is a query of phone numbers
7 within a certain NPA-NXX associated with requests
8 made by a consumer with that telephone number within
9 the respective NPA-NXX that has made a request of
10 Verizon Wireless to port from that company to
11 Verizon Wireless but was unable to do so because
12 that number, the respective number, was not
13 registered in the Local Exchange Routing Guide,
14 common known as the LERG.

15 MR. COY: With that, we would ask to have
16 Attachment D to Exhibit 1 admitted into evidence.

17 JUDGE ALBERS: Is there any objections to
18 Attachment D?

19 MR. MUNCY: Yes, Your Honor. We object to the
20 admission of Attachment D. Attachment D is an
21 attempt by Verizon Wireless to file additional and
22 supplemental direct testimony. The schedule in this

1 case was previously set and their testimony was due
2 some time ago. Attachment D, Petitioner has had no
3 opportunity to conduct any discovery in regard to
4 the document, and its admission would also deny it
5 the opportunity to respond to the document in its
6 rebuttal testimony, and it's inappropriate in light
7 of the schedule that has been set in this
8 proceeding, and I would also observe that the
9 document, while listing a number of carriers in it
10 who purportedly there was trouble porting a number
11 to, that the Petitioner in this case, Yates City
12 Telephone Company, is not listed on the document.

13 JUDGE ALBERS: Does Staff have any response?

14 MR. MADIAR: Yes, sir. Staff would note a
15 similar objection was made in an earlier case that
16 this would -- the admission of this document would
17 be improper hearsay. It does not fall within the
18 exception that it's a business record and that
19 Mr. McDermott is not the custodian of record and
20 would not be able to prove up its authenticity.

21 JUDGE ALBERS: Would you like to respond to
22 those objections?

1 MR. COY: Yes, and in light of the objection on
2 hearsay on the business records, I'd like to ask
3 Mr. McDermott a couple of questions on voir dire.

4 JUDGE ALBERS: I'll allow that.

5 VOIR DIRE EXAMINATION

6 BY MR. COY:

7 Q. Mr. McDermott, is Attachment D a business
8 record of Verizon Wireless that is kept in the
9 ordinary course of business at this time?

10 A. Yes, it is.

11 Q. And what period of time does the information on
12 Attachment D relate to?

13 A. The query was made for those porting requests
14 from May 24, 2004, through the evening of June 7,
15 2004, with a subsequent run on the morning of June
16 8, 2004.

17 MR. COY: With respect to the argument that the
18 information is hearsay, as we've previously noted,
19 we believe this falls in the business records
20 exception to that rule, but more importantly and
21 additionally, the hearsay rule in general at civil
22 trials is not the standard that's applicable before

1 this Commission. The standard applicable before
2 this Commission is to admit information into
3 evidence that would be of the type commonly relied
4 upon by reasonable men in the conduct of their
5 affairs, a much lower standard and certainly permits
6 hearsay.

7 In this instance this information is
8 incredibly relevant in light of all of the
9 testimony, none of which is based upon anything
10 factual, that is being allowed into the record from
11 other witnesses, which also is in a number of cases
12 hearsay, but even in that instance isn't based upon
13 the actual information that is most relevant to this
14 case. Attachment D is the only actual information
15 about take rates with respect wireline-to-wireless
16 in Verizon's service territory that has been offered
17 in evidence. All of the other information is rank
18 speculation or somehow by information to be provided
19 by extrapolation or something like that.

20 Secondly, with respect to the timeliness
21 argument, as Mr. McDermott has just testified, the
22 information did not exist until May 24, 2004. That

1 date obviously is after the date on which testimony
2 was due in this proceeding, and this report
3 obviously relates to the beginning of when number
4 portability became available on May 24th of 2004, so
5 it is the only actual information available.

6 And, finally, the third contention had
7 something to do with the fact of whether Yates City
8 itself is shown on this list, and as we have made
9 clear before, that is completely irrelevant because
10 all of the testimony that's presented in the case or
11 will be presented in the case has to do with number
12 portability outside of the petitioner's particular
13 service territory. It has to do usually with SBC
14 Illinois and with Verizon, some of the exact same
15 areas, by the way, which are covered by Attachment
16 D, so whether or not a particular petitioner
17 actually happens to show up on this list really
18 isn't that important. What's important is that this
19 is the actual take rates being experienced in the
20 first two weeks when local number portability became
21 available.

22 MR. MADIAR: Your Honor, I have some responses,

1 if you care to hear them.

2 JUDGE ALBERS: Okay. It's your objection, so
3 you can have the last word as far as your objection
4 goes.

5 MR. MADIAR: Your Honor, the query was made on
6 the eve of trial. If I'm correct, this document was
7 attempted to be admitted or the query was at least
8 run either Monday night or Tuesday when other cases
9 of similar sort were pending. Typically under -- at
10 least from a business records exception to the
11 hearsay rule, computer-generated documents, rather
12 than preexisting computer-stored documents, are not
13 business records that fall within the hearsay
14 exception, so on that issue.

15 Secondly, this Commission under Section
16 10-40 of the Administrative Procedure Act begins
17 with the presumption that the rules of evidence in
18 civil trials do apply, after which there is an
19 exception to that, so we begin with the application
20 of the hearsay rule, so, and that's all I would like
21 to add.

22 JUDGE ALBERS: Okay. Well, in light of the

1 circumstances associated with this Attachment D, I
2 am again concerned that it goes beyond what would be
3 appropriate to admit into the record in this
4 proceeding, and noting that, I will also note that
5 as for the alleged deficiencies and Staff and I
6 believe also the company's use of take rates for SBC
7 and Verizon, Verizon Wireless is certainly free to
8 question the validity of those take rates to what it
9 believes is appropriate to establish its position.
10 So with that, the admission of Attachment D is
11 denied.

12 (Whereupon the admission of
13 Attachment D was denied.)

14 JUDGE ALBERS: Anything further with regard to
15 the offering of Mr. McDermott's attachments and
16 exhibits?

17 MR. COY: No. He is tendered for
18 cross-examination.

19 MR. MUNCY: No cross-examination of
20 Mr. McDermott in this docket.

21 MR. MADIAR: No cross from Staff.

22 JUDGE ALBERS: I don't have any further

1 questions. Thank you, sir.

2 THE WITNESS: Thank you, Your Honor.

3 (Witness excused.)

4 JUDGE ALBERS: Is there anything additional
5 from Verizon Wireless?

6 MR. COY: No, there is not.

7 JUDGE ALBERS: We have one more witness then in
8 this case and that is Mr. Hoagg.

9 MR. MADIAR: Staff would call Mr. Jeffrey Hoagg
10 to the stand.

11 Mr. Hoagg, would you please state your
12 name for the record.

13 JUDGE ALBERS: Was Mr. Hoagg sworn in this
14 case?

15 MR. MADIAR: Sorry.

16 JUDGE ALBERS: I'm asking.

17 MR. MADIAR: I can't recall. I apologize.

18 JUDGE ALBERS: That's all right. Please stand
19 up and raise your right hand.

20 (Whereupon the witness was sworn by Judge
21 Albers.)

22 JUDGE ALBERS: Thank you.

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JEFFREY H. HOAGG

called as a witness on behalf of the Staff of the
Illinois Commerce Commission, having been first duly
sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MADIAR:

Q. Mr. Hoagg, would you please state your name and
business address for the record, please.

THE WITNESS:

A. Jeffrey Hoagg, J-E-F-F-R-E-Y H-O-A-G-G, 527
East Capitol Avenue, Springfield, Illinois 62701.

MR. MUNCY: Your Honor, Petitioner would be
glad to waive the foundational questions in regard
to Mr. Hoagg's testimony and has no objection to
Mr. Hoagg's testimony being incorporated into the
record.

MR. COY: I'm going to make my usual motions
and objections, but if it's not going to be any
waiver, I don't feel a need for the foundational
questions.

1 JUDGE ALBERS: Okay.

2 MR. MADIAR: Your Honor, at this time Staff
3 would seek to admit into evidence ICC Staff Exhibit
4 1.0 which consists of 20 pages of narrative
5 testimony in question and answer format titled
6 Direct Testimony of Jeffrey H. Hoagg, and this
7 prefiled testimony was filed on the e-Docket system
8 of this Commission. We seek to have this admitted
9 as the sworn direct testimony of Mr. Hoagg in this
10 proceeding.

11 JUDGE ALBERS: Is there any objection?

12 MR. COY: I have a motion to strike a portion
13 of it.

14 JUDGE ALBERS: Okay.

15 MR. COY: Should I present that at this time?

16 JUDGE ALBERS: Please.

17 MR. COY: The motion relates to the testimony
18 that begins at line 243 and continues through line
19 248 and then again the testimony which begins on 299
20 and continues through line 309.

21 The basis for the motion is that this is
22 where the Staff's witness relies upon or presents --

1 purports to present testimony which is obviously
2 based upon hearsay about take rates in other areas
3 and is directly sort of the flip side of the coin to
4 the information that we have submitted or attempted
5 to submit in Attachment D, and we find this very
6 prejudicial in light of our not being able to put in
7 evidence the information in Attachment D which is
8 directly relevant to wireline-to-wireless which this
9 information is not.

10 JUDGE ALBERS: A response?

11 MR. MADIAR: Your Honor, Staff's response is
12 that the information put forth in the two portions
13 that Mr. Coy would seek to strike from Mr. Hoagg's
14 prefiled direct testimony is of the type that's
15 commonly relied upon by reasonably prudent men in
16 the conduct of their affairs and that conversing
17 with regulatory personnel from other companies is
18 something that a person who is involved in the
19 industry would do in formulating the basis of their
20 opinions and is substantive evidence.

21 JUDGE ALBERS: Do you have a reply?

22 MR. COY: Yes. Given the nature of these

1 proceedings, we have the benefit of all kinds of --
2 I guess 32 instant replays of all of the issues, but
3 we know from the other proceedings that the witness
4 didn't even talk to the people that know the
5 information that he purports to put in his
6 testimony. He talked to people who talked to people
7 that who knows how many people they talked to to get
8 the information. The witness on the cross-
9 examination in the earlier proceeding didn't even
10 know what question was asked by the people he talked
11 to of the people who really know the information.
12 We have gotten to the height of absurdity with
13 respect to the application here sometimes of strict
14 hearsay rules and sometimes of reasonable person
15 rules, and we find this material extremely
16 prejudicial given our inability to have in evidence
17 Attachment D. With all due respect, we see a double
18 standard here, and that's what we're arguing.

19 JUDGE ALBERS: Well, I want to assure you I'm
20 not playing favorites. You suggested before that
21 perhaps this case is already preordained. I also
22 want to assure you there's no certainty of the

1 outcome of any of these proceedings.

2 MR. COY: Let me say if you were the final
3 arbitrator, I would be more assured.

4 JUDGE ALBERS: I can only limit my comments to
5 my own judgment. I will grant you that, but I can
6 also not tell you what the Commission is going to
7 do, nor do I believe anyone in this room can predict
8 what the Commission is going to do. I hear chuckles
9 because I think those with many years of experience
10 before this Commission have often scratched their
11 heads following Commission meetings.

12 Given that in this proceeding we do now
13 have the so to speak benefit of having heard
14 Mr. Coy's follow-up questions of Mr. Hoagg following
15 the last time he was allowed to question in this
16 area, perhaps to make sure the record in this matter
17 is clear, Mr. Coy, would you be interested in asking
18 Mr. Hoagg those same questions now regarding his
19 preparation of this area of his testimony?

20 MR. COY: If that would assist in the ruling, I
21 would be happy to do so.

22 JUDGE ALBERS: I think it would assist in the

1 ruling.

2

3

VOIR DIRE EXAMINATION

4

BY MR. COY:

5

Q. With respect to your testimony, Mr. Hoagg, at

6

line 243 where you say based on my discussions with

7

representatives from SBC and Verizon, specifically

8

with whom from SBC did you discuss this information?

9

A. With respect to SBC, my conversations on this

10

particular point were with Carl Wardin of their --

11

what I call their regulatory crew.

12

Q. And would this individual be the individual who

13

would actually possess the information with respect

14

to the take rates that's in your testimony?

15

A. He would not be the individual that would

16

generate these data.

17

Q. Is it your understanding and belief that he

18

would have to go to someone else within SBC and ask

19

them for this information?

20

A. Yes.

21

Q. Do you know with precision what he asked them

22

for?

1 A. No. I know with no precision precisely how he
2 conveyed the request for information.

3 Q. With respect to Verizon, who is the individual
4 that you have reference to in your testimony at line
5 233?

6 A. His name is Greg Smith also of a what, again, I
7 call a regulatory group.

8 Q. And if I asked you the same questions about him
9 having to go to someone else to get the information
10 as I did with respect to SBC, would you give me the
11 same answers?

12 A. Yes.

13 MR. COY: I think that's all I need.

14 JUDGE ALBERS: Okay. Mr. Coy, I think you have
15 succeeded this time around by providing additional
16 information for me before making the ruling that
17 perhaps Mr. Hoagg's source of this information is a
18 bit too far removed to still be considered
19 appropriate for us to rely upon. So with that said,
20 lines --

21 MR. MADIAR: Your Honor? Staff was seeking to
22 have this admitted as substantive evidence under the

1 hearsay exception. An alternative ground is that
2 this would be the type of evidence that -- or
3 materials that an expert in the field could rely
4 upon to base their opinion in formulating the
5 opinion that they're offering here, so in that case
6 this would not be admitted as substantive evidence
7 but as a sufficient basis to which an expert could
8 formulate their opinion.

9 MR. COY: In order to qualify under that
10 exception to the hearsay rule the witness has to
11 disclose the source of the information on which he
12 relied upon for his expert opinion. He has to put
13 that into evidence as well, and the
14 cross-examination has just indicated he doesn't even
15 know what was asked or who was asked for the
16 applicable information he's purporting to testify
17 about, so he can't meet that exception to the
18 hearsay rule either as an expert opinion because
19 those facts and that information has to be presented
20 in the record with the expert opinion, and that's
21 what's missing. That's precisely what's missing.

22 JUDGE ALBERS: I just want to be clear. What

1 exactly are you saying is missing?

2 MR. COY: The actual source and information
3 that he is relying upon. The source and the
4 information has to be disclosed to people if he says
5 this is what he's basing his expert opinion on and
6 he wants to have that -- you know, the exception to
7 the hearsay rule. The other party is entitled to
8 have everything in evidence then if that's going to
9 be the basis for it, and he can't provide it in
10 evidence. It becomes circular here. He can't tell
11 us where this information actually came from.

12 JUDGE ALBERS: And the individuals that he
13 identified in your mind don't constitute the source
14 of the information?

15 MR. COY: I'm sorry.

16 JUDGE ALBERS: The individuals he identified in
17 your mind don't constitute the source of the
18 information?

19 MR. COY: No. His testimony is he knows
20 they're not the source of the information. He knows
21 that they went to someone else and, critically, he
22 doesn't know exactly what they asked someone else

1 for.

2 MR. MADIAR: Your Honor, I would disagree with
3 Mr. Coy's characterization that allowing this in as
4 a sufficient basis or sufficient information of
5 which to formulate an expert opinion or opinion
6 testimony is a hearsay exception. That is
7 incorrect. This is merely asking whether this is
8 sufficient information or reliable information that
9 an expert may utilize to formulate the basis of
10 their opinion. It doesn't come in as substantive
11 evidence. That's why I'm seeking alternative
12 grounds that are not related to hearsay in order to
13 have this admitted. I'm seeking to have this to
14 crystallize the grounds that this is the type of
15 information that experts in the field would normally
16 rely upon in formulating the basis of their opinion
17 which is not a hearsay exception.

18 JUDGE ALBERS: All right. Mr. Madair, you've
19 persuaded me back again. Numbers themselves, as
20 you've indicated, Mr. Coy, are at least questionable
21 as far as their validity, but to the extent that
22 Mr. Hoagg used them to come to his opinions in this

1 proceeding, which I believe he's indicated he has in
2 his testimony, I think it would be appropriate to
3 accept it for that, and you are certainly free, if
4 you wish, to further cast doubt on how he put his
5 opinion together. You're free to do that. So with
6 that, I will deny the motion to strike.

7 MR. MADIAR: Thank you, Your Honor.

8 MR. COY: I want to be sure I understand the
9 ruling though. As I understand the ruling, it is
10 that you are accepting them for the limited purpose
11 that counsel for Staff outlined; namely, that this
12 is what he relied upon for his opinion, but you are
13 not accepting this for the truth of the information
14 itself, so it ought not be cited in anybody's brief
15 or anything as being factually the basis on the
16 basis of this witness's testimony.

17 JUDGE ALBERS: Ought not be cited as facts --

18 MR. COY: As being fact --

19 JUDGE ALBERS: At least from Mr. Hoagg. I
20 don't think --

21 MR. COY: Right.

22 JUDGE ALBERS: -- we've indicated anywhere that

1 no one else has conducted their own -- well, if we
2 have, then that speaks for itself.

3 MR. COY: Yes. I agree.

4 MR. MADIAR: Thank you, Your Honor.

5 JUDGE ALBERS: Okay.

6 Okay. Are there any other objections to
7 the admission of Staff Exhibit 1? Mr. Coy?

8 MR. COY: No.

9 JUDGE ALBERS: All right. With that, then
10 Staff Exhibit 1 is admitted.

11 (Whereupon Staff Exhibit 1 was received
12 into evidence.)

13 MR. COY: My only qualification would be
14 certainly without prejudice to my earlier motion to
15 dismiss that would have covered everything. I'm not
16 waiving that.

17 JUDGE ALBERS: I understand.

18 MR. MADIAR: Okay.

19 JUDGE ALBERS: Well, actually your motion --
20 oh, yes, yes, yes. Thank you.

21 Okay. And as far as is Mr. Hoagg being
22 tendered for cross?

1 MR. MADIAR: Mr. Hoagg is available for cross.

2 JUDGE ALBERS: Okay.

3 MR. COY: I would make my motion to permit the
4 incorporation of my previous cross-examination from
5 the Odin case or, in the alternative, to submit an
6 exhibit of cross-examination from that case that I
7 believe is applicable here, and find it prejudicial
8 to have to cross-examine Mr. Hoagg I think -- I'm
9 losing track whether this would be the fifth or
10 sixth time in two and a half days and decline to do
11 so.

12 JUDGE ALBERS: Can I assume that individuals'
13 objections, responses, and replies would be
14 identical as they were raised with regard to
15 Mr. Hendricks?

16 MR. MADIAR: Correct; from Staff. Sorry.

17 MR. MUNCY: Yes.

18 JUDGE ALBERS: You said yes?

19 MR. MUNCY: Yes.

20 JUDGE ALBERS: And your comments would be the
21 same as well?

22 MR. COY: My replies undoubtedly would be the

1 same.

2 JUDGE ALBERS: Okay. Well, in that case then
3 my ruling is the same.

4 MR. COY: Perhaps we could just number these
5 motions and say number 1, number 2.

6 JUDGE ALBERS: Okay. Does anyone have any
7 questions then for Mr. Hoagg? Mr. Coy, do you have
8 any questions you'd like to ask Mr. Hoagg?

9 MR. COY: Oh, no. I'm sorry. I thought I had
10 indicated we're going to decline.

11 JUDGE ALBERS: I just want to be clear.

12 MR. COY: Thank you.

13 JUDGE ALBERS: Mr. Muncy?

14 MR. MUNCY: No cross-examination in this
15 docket.

16 EXAMINATION

17 BY JUDGE ALBERS:

18 Q. Mr. Hoagg, should the Commission be concerned
19 about creating a patchwork of suspensions among
20 those carriers who have received a suspension and
21 those who have not?

22 A. Yes, I believe that is a concern the Commission

1 should have and should weigh.

2 Q. What type of problems do you think could arise
3 from that situation?

4 A. On the customer side, it seems to me there
5 could be, likely would be customer confusion and
6 inconvenience and everything associated with that or
7 things that would be associated with that.

8 On the side of various carriers that
9 would be attempting to cope with such a patchwork,
10 it is my assessment that they would experience
11 various difficulties in coping with that, and it
12 seems to me quite likely that they would incur
13 certain additional costs because of that that they
14 would not otherwise incur but for that patchwork.

15 Q. And do you think that the receipt of a
16 suspension may impede the development of competition
17 in this area?

18 A. The development of competition in the serving
19 territory?

20 Q. Yes. Would it limit the -- would it perhaps
21 hamper the number of providers that may be wireline
22 and wireless that a landline customer might have to

1 choose from?

2 A. I do not believe it would have any direct
3 impact on the number of wireline or potential
4 wireline entrants or at least immediate or large
5 impact.

6 On the wireless side it has -- part of my
7 own assessment that underlies my own thinking in
8 this is that the -- for a temporary period the
9 absence of -- the suspension of and therefore
10 absence of this type of number portability, while it
11 would make a difference in terms of the competitive
12 landscape, probably -- I would characterize it as
13 sort of a difference perhaps on the margin that
14 reflects my own belief that the take rates, which is
15 where this competition would actually materialize,
16 are very low now and my own expectation, based on
17 the actual type of portability we're talking about
18 here, my own expectation that the take rates may
19 stay quite low. Certainly I have no particular
20 insight into that, but that is my own expectation
21 that they very well could stay quite low. Under
22 that scenario, I don't believe the suspension would

1 have a great competitive and what I would call
2 negative competitive impact.

3 Q. But it might deter some customers from -- you
4 think it might deter some customers from moving to a
5 wireless carrier?

6 A. Oh, yes. At least on the margin I have --
7 well, I personally have no doubt it will deter some
8 customers.

9 Q. Okay.

10 A. Again, my own assessment is that in this
11 serving territory, whatever wireless alternatives
12 customers have right now will remain. Those will
13 remain available. That type of competition
14 certainly would be augmented to some unknown degree
15 by the presence of this type of number portability.
16 So if it is suspended, there will be some -- you
17 know, some diminution in at least that potential
18 additional, you know, expansion or amplification of
19 competition.

20 Q. Okay.

21 Now to the extent that implementation of
22 LNP impacts number pooling, do you believe the

1 Commission should pay close attention to that?

2 A. I believe the Commission should pay close
3 attention to that and consider that along with the
4 other pertinent factors in this docket.

5 JUDGE ALBERS: Okay. Thank you, Mr. Hoagg.

6 Do you have any redirect?

7 MR. MADIAR: No redirect, Your Honor.

8 JUDGE ALBERS: Okay.

9 MR. MADIAR: Staff rests.

10 JUDGE ALBERS: Thank you, Mr. Hoagg.

11 (Witness excused.)

12 JUDGE ALBERS: And you said Staff rests in this
13 case?

14 MR. MADIAR: Yes.

15 JUDGE ALBERS: Okay. Is there anything further
16 from anyone with regard to Yates City?

17 MR. MUNCY: No, Your Honor.

18 JUDGE ALBERS: Hearing no response, if there's
19 nothing further, then I will mark the record in this
20 matter Heard and Taken.

21 MR. MADIAR: Thank you, Your Honor.

22 HEARD AND TAKEN

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